

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 27 September 2005

Case No. 2005-STA-48

In the Matter of:
RICK JACKSON,
Complainant,

v.

5 R PROCESSORS, LTD.,
Respondent.

APPEARANCES:
Rick Jackson
Pro se Complainant

Thomas R. Drake, Pro se
On behalf of Respondent

Before: Thomas F. Phalen, Jr.
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER APPROVING
SETTLEMENT AGREEMENT**

This matter arises under the Surface Transportation Assistance Act of 1982 ("the Act" or "STAA"), 49 U.S.C. § 31105, and the regulations promulgated thereunder at 29 C.F.R. Part 1978. The STAA provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would be in violation of those rules. This matter is before me on Complainant's request for hearing and objection to findings issued on behalf of the Secretary of Labor by the Area Director of the Department of Labor Occupational Safety and Health Administration ("OSHA") after investigation of the complaint. 49 U.S.C. § 31105(b)(2)(A), 29 C.F.R. § 1978.105.

On September 7, 2005, a Notice of Hearing and Prehearing Order was issued, which set this matter for hearing on February 7, 2006 in the Madison, Wisconsin area. The parties informed the undersigned on August 26, 2005 that they had negotiated a settlement of the claim and requested that the hearing be cancelled.

On September 21, 2005, the undersigned received the original executed settlement agreement, which consisted of two documents signed by the Complainant and Respondent.¹ These combined documents constitute the settlement agreement.

A copy of the agreements are attached hereto and made a part of this order. The agreement provides that Complainant agreed to accept a one time payment as full and complete settlement of the claim that was filed against Respondent. After reviewing the settlement documents, the undersigned finds the agreement to be fair and reasonable.² Therefore,

¹ In this case, neither party was represented by an attorney or other representative. Complainant faxed a letter dated August 26, 2005 to this office entitled "Settlement Agreement." The original signed letter was received on August 29, 2005, and forwarded to Respondent for approval. Under cover dated September 8, 2005, Respondent returned the handwritten letter, adding CEO Thomas R. Drake's signature, approving the agreement. The undersigned, however, determined that the cover letter added additional terms to the agreement, so it was forwarded to Complainant for approval. On September 21, 2005, this office received a copy of Respondent's additional terms, which included Complainant's original signature. This document stated that Rick Jackson agreed with the language of Mr. Drake's letter, and that the combined August 26, 2005 and September 8, 2005 terms constitute a complete, mutually approved settlement agreement.

² The present matter involves the discharge of Complainant on March 9, 2005, following his hire on March 7, 2005, for refusing to operate the truck to which he was assigned. Complainant contends that he refused to operate the truck because it was unsafe. He filed the present complaint (5-1470-05-0007) with OSHA on March 15, 2005. It was investigated and denied on June 14, 2005, and assigned to the undersigned on July 5, 2005. Following receipt of time waivers, on July 19, 2005 and August 5, 2005, respectively, a pre-hearing conference call took place on August 23, 2005. A hearing schedule was established and the appointment of a settlement judge was discussed.

Since the receipt of the original settlement document, it was discovered by the undersigned that Complainant had filed at least three, and possibly four other complaints with the Occupational Health Administration (OSHA) this year, each alleging violations of the STAA against several employers. One case was assigned to Administrative Law Judge, Robert Hillyard, of this office, and is the subject of a similar settlement agreement for \$2,000.00, approved for recommendation to the Administrative Review Board on August 25, 2005. *Rick Jackson v. Logistics, Inc.*, 2005-STA-0023. The basic file in that matter has been forwarded to the Administrative Review Board pursuant to the regulations.

One of two additional OSHA complaints is part of another case before the undersigned. In *Rick Jackson v. Smedema Trucking, Inc.*, 2005-STA-0044, herein called *Smedema I*, Mr. Jackson alleged that he was hired by Smedema on March 16, 2005, just a few days after having been terminated by R5 Processors, LTD., the Respondent in the present case. In both complaints, Mr. Jackson alleged that Smedema first terminated him on March 28, 2005 after he complained to management that he was not able to complete his daily Chicago dispatches due to delays which prevented him from driving legally. As in the instant case, Mr. Jackson contended that Smedema's actions constituted discrimination under the STAA. This initial claim resulted in a settlement agreement approved by the OSHA Administrator, (5-2780-05-011), the terms of which included reinstatement with Smedema on March 28, 2005.

On April 14, 2005, Smedema terminated Mr. Jackson a second time. Mr. Jackson filed a complaint on May 9, 2005, (5-2780-05-0013), herein called *Smedema II*, alleging the original hire and termination, plus the new allegation that this second termination was in retaliation for filing the first complaint, for essentially the same reasons as given in the first complaint. (*i.e.*, for complaining to management that he was not able to complete his daily Chicago dispatches due to delays which prevented him from driving legally).

On September 23, 2005, Complainant called this office inquiring as to the progress of the undersigned's decision on the parties' proposed settlement in the instant complaint. Since Complainant expressed urgency in this matter due to immediate personal financial difficulties, I note that the present order is a recommended decision and order approving settlement only, the terms of which are not operative until the Administrative Review Board issues an order approving the settlement agreement.

ORDER

IT IS ORDERED that:

- (1) the settlement agreement is hereby APPROVED for recommended approval by the Administrative Review Board.
- (2) the complaint of Rick Jackson is hereby DISMISSED.

A

THOMAS F. PHALEN, JR.
ADMINISTRATIVE LAW JUDGE

NOTICE OF REVIEW: The administrative law judge's Recommended Decision and Order Approving Settlement Agreement, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Settlement, the parties may file briefs with the

During the September 23rd call, Complainant also inquired as to the rules governing an OSHA whistleblower investigation. When asked why OSHA procedural matters were pertinent to the instant action, Complainant responded that he wanted the information in conjunction with a complaint that is currently before OSHA, the case name and number of which is unknown to the undersigned. This would be the fifth 2005 complaint referred to herein. Too little information is deemed to exist on this fifth complaint to warrant further consideration at this time.

Two of Mr. Jackson's five 2005 complaints have been appealed to the undersigned; one of which, *Smedema II*, encompasses a settlement agreement approved by the Administrator of OSHA in *Smedema I*, which appears to be similar to the present settlement agreement recommended for approval. The fourth complaint involves the settlement agreement pending determination by the Board pursuant to Judge Hillyard's recommended decision and order in *Logistics, Inc.*, *supra*; again, similar to the present settlement agreement.

Whether the Board considers the present recommended approval to be with or without qualification by the undersigned, the known proposed and approved settlement agreements present similar enough factual patterns to warrant close attention and consideration before approval by the Board. Since all are not clearly within the case assignment jurisdiction of either the undersigned, the other Administrative Law Judge or the Administrator, it would appear that only the Board would be able to consider whether it is the appropriate forum in which to resolve such matters for the purpose of approving such serial settlement agreements.

Therefore, it is recommended that the Board consider the relationship and effect, if any, between the resolutions of the various complaints that have been resolved by the various settlements set forth above, as part of its settlement agreement approval process in the present matter.

Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. See 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.